IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2700 OF 2004

Anil Somdatta Nagpal .. Applicant
Vs.
The State of Maharashtra .. Respondent.

ALONGWITH

CRIMINAL APPLICATION NO.2701 OF 2004

Vijay Somdatta Nagpal .. Applicant
Vs.
The State of Maharashtra .. Respondent.

ALONGWITH

CRIMINAL APPLICATION NO.2702 OF 2004

Chetan Kirit Mehta .. Applicant
Vs.
The State of Maharashtra .. Respondent.

ALONGWITH

CRIMINAL APPLICATION NO.2703 OF 2004

Lalit Somdatta Nagpal .. Applicant
Vs.
The State of Maharashtra .. Respondent.

Mr.Makarand Adkar for the applicants in C.A.Nos.2700/04, 2701/04 and 2703/04.

Mr.Harshad Nimbalkar for the applicant in C.A.No.2702/04

Ms.P.H.Kantharia APP for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 12TH AUGUST, 2004

P.C.:

. Heard Mr.Makarand Adkar and Mr.Harshad Nimbalkar, learned counsel for the applicants and Ms.P.H.Kantharia, learned A.P.P for the respondents.

2. These four applications are filed by the applicants under section 438 of the Code of Criminal Procedure in C.R.No.39/2004 registered at Karveer police station for offences punishable under sections 3 and 7 of Essential Commodities Act, section 3 of the Petroleum Storage and Distribution Act, 2000, section 3 of Maharashtra Kerosene Dealers Licensing Order, 1966, section 3(1) (2) (3) (4) (5) of the Motor Spirit and High Speed diesel regulation of Supply and prevention of Malpractices Order, 1999, section 5 of the Petrol, Maintenance of Production, Storage and Supply Order, 1999 and sections 420, 465, 467, 468, 471 and 474 of Indian Penal Code. The applicant - Anil Nagpal in Criminal Application No.2700 of 2004, Vijay Nagpal in Criminal Application No.2701 of 2004 and Lalit Nagpal in Criminal Application No.2703 of 2004 are real brothers. Criminal Application No.2702 of 2004 is filed by one Chetan Mehta (for short all the applicants will be

referred to by their first name only).

3. Anil is the owner of two tankers namely MH-15-AG-64 and MH-15-AG-1654 while Lalit is the owner of four tankers namely MH-04-H-4691, MH-15-AG-1650, MH-04-H-1363 and MH-15-AG-58. One tanker bearing No.MH-04-H-1539 stands in the name of co-accused - Smt.Ranjana Nagpal, who has already been granted pre-arrest bail by the Sessions Court. One more tanker involved in the crime is MH-34-A-5878 and its owner is one Pradeep Rogani (for short these tankers will be hereinafter referred to by their last digits only). According to the prosecution, the applicants and other accused are involved in a large scale inter-state racket of misappropriation of petroleum products for preparing low quality of petrol and other petroleum products and to unearth the racket, which has been active for many years, the custody of these applicants would be necessary. It is alleged that the applicants have fabricated vouchers, challans, bills, affidavits etc. in support of their defence that they propose to propound in the case. The investigation revealed that the bills, vouchers, receipts etc. issued in the name of

consignor and consignee, in most of the cases are either not in existence or those are closed or they had not placed order of the petroleum products found in the tankers. The addresses of the companies mentioned in the aforesaid documents are, in some cases, not correct. The applicants allegedly used to transport petroleum products in the tankers owned by them to such place which was nowhere on the record and there they use to carry out the process of its adulteration by mixing Naptha, MTO etc.

4. On 6.5.2004 when the officers of Enforcement Department alongwith Mumbai police and Kolhapur District Supply Officer jointly conducted raid at M.I.D.C. plot Nos.P-25 and P-29, they found some tankers parked at the site, tanks, barrels, gunny bags containing powder and such other material which was being used for adulteration purpose. The offence came to be registered against 11 accused consisting of the plot owners and the persons found on the spot. The names of the applicants revealed during investigation as the persons behind the crime and, therefore, they were shown accused in the remand

report filed in May 2004 as absconders. The investigation further revealed that the arrested accused including drivers of the vehicles were acting on the directions and instructions of the applicants.

5. It is in this backdrop of the facts I heard learned counsel appearing for the parties at length. The learned counsel for the applicants in all four applications, at the outset submitted that the applicants are innocent and registration of the crime against them is politically motivated. Mr.Adkar, learned counsel for Anil, Vijay and Lalit submitted that the investigating agency has bent upon to arrest the applicants at the behest of some interested persons in politics. In so far as applicant - Lalit is concerned Mr.Adkar, submitted that he has absolutely no concerned with the transport business run by his brother - Anil. Lalit is in the business of building and construction. Though four tankers stand in his name he had given them to his brother - Anil for running his transport business under the agreement dated 20.5.2003. In so far as Vijay is concerned he is neither owner of the tankers nor he has any

connection with the transport business. He further submitted that Anil though runs business of transport has absolutely no control over the consignor or consignee and, therefore, the containts of the tanker, even assumed were adulterated, he cannot be held responsible for the same. Mr.Nimbalkar, learned counsel for Chetan submitted that Chetan is only a commission agent, who arranges transport for consignor and consignee and the entire documentation for the purposes of carrying products in the tankers, supplied by him, is prepared by the consignor. According to Mr.Nimbalkar the applicant has clean antecedents.

6. It was further submitted that even if all the allegations made against the applicants are taken as it is, the provisions of Essential Commodities Act or any other Act for that matter would not be attracted inasmuch as none of the tankers was found with adulterated petroleum product. It was further submitted that none of the tankers belonging to the applicants were found at M.I.D.C. Plot No.P-25 and P-29. Though two tankers bearing No.1539 and 1654 were found parked opposite to plot No.P-25 the product found in those

tankers was not adulterated. All the eight tankers were in fact on their route from Khopoli to Ichalkaranji, Baroda to Goa and Nava Seva to Salem, Tamil Nadu. All the three routes, according to the applicants, go via Kolhapur and, therefore, finding of the tankers at Kolhapur was not unnatural and they were not off the route. They further invited my attention to various documents including the affidavits of A.S.Thakral, Anand Sheth and the applications for return of the property filed under section 6(c) of the Essential Commodities Act filed by M/s.Karishma Fuels Pvt. Ltd., M/s.Orchid International and K.M.B. Granites (P) Ltd. and contended that the consignor and consignee have claimed the product found in the tankers before the appropriate authority. According to the learned counsel for the applicants custodial interrogation would not be necessary. The applicants have co-operated with the investigation so far and would co-operate in future. The reliance was placed on the judgment of the Apex Court in the case of **Joginder Kumar Vs. State of U.P. and Others AIR 1994 S.C. 1349** to contend that there is absolutely no justification to exercise the power to arrest. The applicants, who are well reputed persons in the

society if arrested or detained in police lock up that would cause incalculable harm to their reputation. No reasonable ground exists in the instant case to effect arrest of the applicants. They cannot be arrested merely on suspicion of the complicity in the crime. The reliance was also placed on the judgment of the Apex Court in **M.Sreenivasulu Reddy Vs. State of Tamil Nadu 2000 (6) SCALE 580.**

7. On the other hand Ms.Kantharia, learned A.P.P. placed before me a file consisting of statements of various witnesses recorded so far and some other documents such a Chemical Analyser's report, challans, invoices, affidavits etc. The file contains 74 pages (for short "the file"). Since the investigation is going on the documents in the file could not be made available to the defence. She took me through various statements to show the complicity of the applicants and also to satisfy me that the applicants have manipulated the record in support of their defence in the case. In short, Ms.Kantharia submitted that the applicants are involved in a large scale inter state racket of misappropriation and adultration of petroleum

products. She also invited my attention to the antecedents of Lalit and Anil, and contended that there are cases pending against both the brothers in which the allegations against them are of similar nature. In short, she suggested that Lalit and Anil are habitual offenders and to unearth the roots of their unlawful activity so as to prevent repetition of such offence in future their custody is necessary.

8. I have perused the entire material and in particular the file placed before me by the prosecution. It would not be possible for me to make a categoric reference to the statements of various witnesses in view of the apprehension expressed by the prosecution that the applicants are likely to tamper with evidence if the names of the witnesses are disclosed at this stage. Before I make reference to the documents in the file I would like to deal with the documents placed on record by the applicants.

9. As against the case of the prosecution that the firms, such as Orchid International, Karishma Fuels Pvt. Ltd. and KMB Granites Pvt. Ltd. were

either not in existence on the date of commission of the crime or had been closed, the applicants have placed heavy reliance upon the affidavits of A.S.Thakral of M/s.Karishma Fuels Pvt. Ltd. and A.B.Sheth of M/s.Orchid International. Those affidavits are apparently affirmed at Bombay and before one notary, J.T.Bhutani on 28.5.2004. Both these affidavits were affirmed on the same day. Similarly the applicants have placed heavy reliance on the applications made by M/s.K.M.B.Granites Pvt. Ltd., M/s.Orchid International and M/s.Karishma Fuels Pvt. Ltd. for return of property under section 6(C) of the Essential Commodities Act, 1955. A serious doubt was raised about the genuineness of the affidavits of A.S.Thakral and A.D.Sheth. The notary, who notarised those affidavits had neither put his notary registration number nor did he make entry of those affidavits in the register which he was obliged to maintained under the provisions of law. The stamp papers were not issued in the names of the affients. Though both the affients are not residents of Mumbai, their affidavits were affirmed at Chembur, Mumbai. The notary, who was present in the court, to my specific query stated that he did not know the

affients and he notarised those documents only because they were sent to him by Anil and Lalit Nagpal. He had no explanation as to why did he not enter the affidavits in his register. Moreover, the affients were not identified by any one. Even the so called agreement dated 28th May, 2003 signed before the same notary by which Lalit claims that he had given his tankers to Anil, also prima facie did inspire confidence. Firstly, this document is not an agreement. It was a letter on the stamp paper addressed to Lalit by Anil. It does not bear signature of Lalit. Secondly, for writing such a simple four lines letter giving number of the tankers I failed to understand why it was required to be notarised. And, thirdly, even while notarising this document the notary did not observe the prescribed procedure. My attention was invited to the leave and licence agreement dated 25.11.2003 entered into by A.D.Sheth on behalf of M/s.Orchid International with one Kalindi Parsekar, landlady of the place where M/s.Orchid International was shown to have had their office at Mapsua (Goa) and also to the applications filed by M/s.Orchind International and M/s.Karishma Fuels for return of property. All these documents give different

addresses of the affients and the applicants. Ms.Kantharia, learned A.P.P. submitted that A.S.Thakral and A.D.Sheth were not available at the addresses mentioned in the aforstated documents. A strenuous efforts were made by the investigating agency to locate them however, they were not available at the addresses mentioned in the aforestated documents. As a matter of fact, the residential address of A.D. Sheth mentioned in the affidavit was not only incorrect but it did not tally with the residential address mentioned in the leave and licence agreement. The address in the

affidavit of A.D.Seth is of Goa, while his residential address shown in the leave and licence agreement was of Mumbai. The residential address of Mumbai, as mentioned in the leave and licence agreement, was found to be incorrect. The statement of one of the witness at page 21 of the file supports the prosecution case against the applicant that Orchid International was never functional. All these documents, according to the prosecution, are manipulated by the applicants in support of their defence. Prima facie, I find merit in the submissions of Ms.Kantharia that these firms do not exist and the persons who filed affidavits or the applications for return of the

petroleum products in the tankers on behalf of the firms are either fictitious or they are the employees or paid workers of the applicants. In short, the firms M/s.Karishma Fuels Pvt. Ltd., M/s.K.M.B. Granites and M/s.Orchid International are either bogus or they exist only on papers.

10. The tankers belonging to Lalit, Anil and co-accused Ranjana Nagpal were found either at M.I.D.C. plot No.P-25 and P-29 or Vijayanand petrol pump, Kolhapur. For instance tanker No.1363 belonging to Lalit which was filled with 20000 litres of rectified residue petroleum product on 2.5.2004 by Karishma Fuels Pvt. Ltd. for Malikarjun Oil Suppliers, Ichalkaranji did not reach the place of destination and it was found parked at Vijayanand petrol pump. According to the prosecution this was on the directions of the applicants. During investigation it transpired that Malikarjun Oil Suppliers, Ichalkaranji had not placed an order for those product to Karishma Fuels Pvt. Ltd. at all. The documents in the file at Page Nos.33 to 40 support the prosecution case that name of the consignee shown by the applicant had not placed the order of the product found in the

tanker of Lalit. Karishma Fuels Pvt. Ltd. was also found closed since last three years. Arvind Thakral, owner of Karishman Fuels Pvt. Ltd. was not available on the given address. Even the challan of N.G.A.Roadlines was found to be of non existing transport company. The Chemical Analyser's report of the petroleum product in tanker 1363 was found to be adulterated. The modus operandi in respect of even other tankers was similar. The other tankers were also found either at the petrol pump or at MIDC plot and that the consignee and consignor did not exist and the containts of most of the tankers were found adulterated. The challans, invoices, bills, billty's etc were also found to be manipulated.

11. In so far as Chetan, Anil and Lalit are concerned, a perusal of various statements placed in the file by the investigating agency would show that Chetan was a link between the arrested tankers' driver and Nagpal brothers on one side and the arrested accused Deepak Mundada and drivers on other side. He used to redirect the tankers to the place of adulteration at Kolhapur instead of allowing them to proceed towards the destination on

record. The telephone number as reflected in the statements of some witnesses clearly demonstrate that the arrested drivers used to be in constant contact with Chetan and receive instructions from him about the directions of the tankers to the place of adulteration. 4-5 witnesses from page 63 to 74 of the file clearly demonstrate the active participation of Anil and Chetan. Even the person who used to issue challans of fictitious company has stated that he did so as per the directions of Chetan. It is absolutely clear from the material produced before me that Chetan, Anil and Lalit were totally hand in glove and were carrying out an unlawful activity of adulteration of petroleum products. At this stage, there exist reasonable grounds to prima facie believe that the alleged offence has been committed. Keeping in view the overall facts and circumstances of the case, in my opinion, the judgments relied upon by the learned counsel for the applicants would not help the applicants in the instant case.

12. In so far as Vijay Nagpal is concerned, the only allegation agianst him is that he had let out his premises to Chetan Mehta and that he had

introduced one of the accused involved in the present case to Chetan Mehta at his Mumbai office. Over and above this, I did not find any other material to show his involvement in the unlawful activity of Lalit, Anil and Chetan. In my opinion, he is entitled for pre-arrest bail since his custodial interrogation would not be necessary in the given facts and circumstances of the case.

13. I am not dealing with every submission advanced by Ms.Kantharia, learned A.P.P. particularly in view of the fact that I am satisfied that the aforestated 2-3 instances are sufficient enough to reach the conlusion at this stage that Lalit, Anil and Chetan were dealing in adulteration of petroleum products on large scale for which they prima facie seem to have set up an infrastructure involving several persons which could match a well organised legitimate inter-state business activity. They, prima facie, seem to have manipulated several documents such as affidavits, challans, vouchers, receipts and billty’s etc. This is a fit case, in my opinion, where the custody of Anil, Lalit and Chetan would be necessary to unearth deep rooted racket involved in

adulteration of petroleum products. The grant of anticipatory bail to such accused would impede the course of enquiry or investigation. I am strongly of the opinion that this is not a case, in so far as Anil, Lalit and Chetan are concerned for exercising discretion under section 438 of the Code of Criminal Procedure in favour of granting anticipatory bail. I have absolutely no doubt that if they are equipped with such order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects to unearth all ramifications involved in the crime. The public interest would also suffer as a consequence. The discretionary power under section 438 cannot be exercised against the accused who are capable of manipulating and fabricating the documents. The custodial interrogation of such accused is indispensably necessary for the investigating agency to unearth all links involved in the crime committed by them. The applicants made themselves available for interrogation being armed with an order preventing their arrest is not of much relevance now because that is not aspect which can be taken advantage by the applicants in this case. In view of the allegations against

Anil, Lalit and Chetan any further loss of time would impair effectiveness of the inquiry and investigation. Taking the nature and seriousness of the allegations into consideration as well as largeness of unlawful activities conducted by the applicants and other accused this is not a fit case, in so far as Lalit, Anil and Chetan are concerned, to grant prearrest bail. Their application is rejected.

14. In so far as application of Vijay Nagpal bearing Criminal Application No.2701 of 2004 is concerned, it is allowed.

. The applicant - Vijay Nagpal is directed to be enlarged on bail, in the event of his arrest, in C.R.No.39/2004 registered at Karveer police station, on his furnishing a personal bond of Rs.1,00,000/- with one or two sureties of the like amount to the satisfaction of the Station Officer of the concerned police station, subject to the condition that he shall report the investigating officer every alternate day for a period of fifteen days between 10.00 am and 12.00 noon and thereafter on every Wednesday and Saturday between 10.00 a.m.

and 12.00 noon until filing of the charge sheet or for a period of 90 days from today whichever is earlier and thereafter as and when called by the investigating officer.

. It is open for the applicants namely Lalit, Anil and Chetan to apply for regular bail at appropriate stage.

. At this stage the learned counsel for the applicants prays for one week's time to surrender. Ms.Kantharia, learned A.P.P. did not seriously oppose the prayer. In view of this applicants are directed to surrender before the investigating officer on or before 20.8.2004.

. While passing this order I shall not be understood to have expressed any opinion on merits of the case and the Sessions Court shall deal with the case as well as bail applications under section 439 of Criminal Procedure Code, if any, filed by the applicants on merits in accordance with law and uninfluenced by the observations made in this order.

. The application is disposed of.

15. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar/Court Stenographer of this court.

(D.B.Bhosale, J.)